

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: JUNE 16, 2004 Division: TDC

Bulk Item: Yes X No Department:

AGENDA ITEM WORDING:

Approval of a modified and extended Agreement with The Market Share Company until September 30, 2005.

ITEM BACKGROUND:

TDC approved at their meeting of June 2, 2004.

PREVIOUS REVELANT BOCC ACTION:

BOCC approved original agreement at their meeting of April 20, 2000.
BOCC approved amendment to Agreement at their meeting of April 16, 2003.

CONTRACT/AGREEMENT CHANGES:

To modify and extend

STAFF RECOMMENDATIONS:

Approval

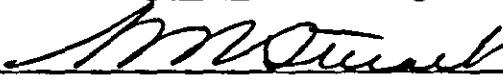
TOTAL COST: NOT TO EXCEED \$80,000 ANNUALLY **BUDGETED:** YES

COST TO COUNTY: NOT TO EXCEED \$80,000 ANNUALLY **SOURCE OF FUNDS:** TDC

REVENUE PRODUCING: Yes X No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


(Lynda Stuart)

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION:

AGENDA ITEM # D4

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with:	<u>The Market Share</u>	Contract #	<u> </u>
	<u>Company, Inc.</u>	Effective Date:	<u>7/1/04</u>
		Expiration Date:	<u>9/30/05</u>
Contract Purpose/Description:			

Approval of a modified and extended Agreement with The Market Share Company until September 30, 2005.

Contract Manager: Maxine Pacini 3523 TDC # 3
(Name) (Ext.) (Department/Stop #)

for BOCC meeting on 6/16/04 Agenda Deadline: 6/1/04

CONTRACT COSTS

Total Dollar Value of Contract: \$ 80,000 Current Year Portion: \$ _____
 Budgeted? Yes ☒ No ☐ Account Codes: 115-75035-530340-T45M-230X-530340
 Grant: \$ _____
 County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$_____/yr
(Not included in dollar value above)

For: _____
(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	5/20/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	M. J. [Signature]	5/20/04
Risk Management	5/24/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	B. L. [Signature]	5/24/04
O.M.B./Purchasing	5/24/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	[Signature]	5/24/04
County Attorney	5/11/04	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	S. Hutton	5/11/04

Comments: _____

CONTRACT FOR MAIL FULFILLMENT

THIS CONTRACT is entered into this _____ day of _____, 2004, by and between the BOARD OF COUNTY COMMISSIONERS, Monroe County, Florida, hereinafter referred to as the County, and The Market Share Company Inc., hereinafter referred to as Provider;

WITNESSETH

WHEREAS, Provider is qualified to provide mail fulfillment services to promote and advertise the Florida Keys resulting from the data collected by the five (5) chambers of commerce; and

WHEREAS, County and Provider currently have a contractual arrangement for services through September 30, 2004; and

WHEREAS, both parties desire to modify said contract and to extend it for an additional one year period; and

WHEREAS, the Tourist Development Council (TDC) has recommended to County that a revised and extended contract for mail fulfillment services be executed;

NOW AND THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **PROVISIONS OF OLD CONTRACT SUPERSEDED:** The termination date and any other provisions of the contract dated April 20, 2000, as amended on April 16, 2003, inconsistent with the terms of this document are superseded and replaced by this contract, effective July 1, 2004 .

2. **TERMS:** The term of this revised and extended contract is for a period of one and one-quarter years beginning July 1, 2004 and expiring on September 30, 2005.

3. **SCOPE OF SERVICES:** Provider shall process and mail material provided by County pursuant to data downloaded from each of five chambers of commerce in the Florida Keys. Down loading shall occur each Monday through Friday between the hours of 9:00 a.m. and 10:00 a.m. to the TDC office central computer unit. Mailing information will then be down loaded from the central unit to The Market Share Company, Inc. Only TDC approved materials may be inserted and mailed. Mailing information is to be used for TDC business only. Provider shall ink jet address with a bar-code, insert advertising and promotional materials as described below, and place each piece into U.S. mail according to the following specifications:

(a) **District Fulfillment Insertion and Label:** Up to five (5) brochures or similar promotional materials shall be inserted into envelopes ink jet addressed with a bar-code to send pursuant to data downloaded from the five chambers of commerce. The envelopes shall be #11 Ink jet process only. Mail shall be bulk-mail or first-class as further specified in sub-paragraph (e).

(b) **Keys Guide Insertion and Label:** A guide to the Florida Keys and Key West shall be mailed, per direction in sub-paragraph (d), with a pre-printed indesia, in a 6-

1/4" x 9-1/2" envelope bar-coded and labeled pursuant to data downloaded from the five (5) chambers of commerce, with the total weight of 6.60 ounces. Ink jet process only. Mail shall be bulk-mail or first-class as further specified in sub-paragraph (e).

(c) Case and Tube Handling: Provider shall mail out case and tube mailings per County request

(d) Provider shall store three months supply of the materials supplied by County for mail-out. Provider shall be reimbursed the cost of storage of collateral materials, including applicable taxes, in excess of the three month supply.

(e) Provider shall mail out first-class mail, as required by the downloaded data, within twenty-four (24) hours of receipt of data, and bulk mail, as required by the downloaded data, within forty-eight (48) hours of accumulating sufficient number of bulk-mail pieces to qualify for U.S. Postal Service bulk-mail rates. County shall pay for the rental of a postage meter compatible with Provider's mailing machine of Provider's choice and used solely for County. Any postal cost required by the U.S. Postmaster shall be paid directly to the U.S. Postmaster by County.

(f) Provider shall insert written materials into the envelopes with machines except where in size of the material is incompatible with Provider's equipment described in Provider's price quote which is incorporated herein by reference.

(g) Provider shall issue to County the following monthly reports:

Inventory Report: Reporting, beginning inventory plus material received less material mailed out, and ending inventory.

Postage Accounts Reconciliation Report: Reconciliation of postage funds in first class meter account and bulk mail account.

4. COMPENSATION:

a. Provider shall charge twenty two thousand and eight hundred (\$22,800) dollars as an annual administration fee to cover costs of preparing reports, maintaining equipment, downloading time, three (3) months storage and other administration costs. Payment will be made in monthly installments of nineteen hundred (\$1,900) dollars.

b. Provider shall receive .23 cents per piece processed in consideration for the District Fulfillment Insertion and Label and Keys Guide Insertion and Label services described in paragraph 1, sub-paragraphs (a) and (b) in accordance with all specifications of paragraph 1. Provider shall receive five dollars and seventy five cents (\$5.75) per each pre-packed box or case for handling and one dollar and twenty five (\$1.25) cents per poster tube handling.

c. Provider will be responsible for the removal, transport and disposal of unused outdated collateral material as directed by the TDC. All costs associated with this service is reimbursable by the TDC.

d. The compensation under this agreement shall not exceed eighty thousand dollars (\$80,000) annually.

e. Monroe County's performance and obligation to pay under this contract, is contingent upon an annual appropriation by the Board of County Commissioners.

5. RECORDS – ACCESS AND AUDITS: The Provider shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. The records to justify all charges, expenses and costs incurred in performing the work shall be maintained by the Provider for at least four (4) years after completion of this contract. The County shall have reasonable and timely access to such books, records, and documents concerning the contracted services. If an auditor employed by the County or Clerk determines that monies

paid to Provider pursuant to this Agreement were spent for purposes not authorized by this Agreement, the Provider shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to Provider.

(a) **PUBLIC ACCESS.** The County and Provider shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Provider in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by Provider.

6. **INDEPENDENT CONTRACTOR RELATIONSHIP:** The Provider, is and shall be, in the performance of all works, services, and activities under this contract, an independent contractor and not an employee, agent or servant of the County. The Provider shall exercise control, direction, and supervision over the means and manner and personnel in which it and its employees perform the work. In all respects, the "Provider's" relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. Moreover, the Provider shall have no authority whatsoever to act on behalf and/or as agent for the County in any promise, contract, or representation other than specifically provided for in this contract. The County shall at no time be legally responsible for any negligence on the part of said Provider, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, firm, or corporation.

7. **MODIFICATION:** Additions to, modification to, or deletions from the Scope of Work and/or costs of work set forth in this contract may be made only by amendment to this contract which must be approved in writing by the County. No modification shall become effective without written approval of County.

8. **BREACH AND PENALTIES:** The parties agree to full performance of the covenants contained in this contract, and the County reserves the right at its discretion, provided any breach is material, to terminate the services in this contract for any misfeasance, malfeasance or nonperformance of the contract terms or negligent performance of the contract terms by Provider. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar the County from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

9. **INSURANCE:** The Provider shall maintain the following required insurance throughout the entire term of this contract and any extensions. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of the Provider to maintain the required insurance shall not extend any deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for Provider's failure to maintain the required insurance.

The Provider shall provide, to the County, as satisfactory evidence of the required insurance, either:

- * Certificate of Insurance
or
- * A Certified copy of the actual insurance policy

The County, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract.

All Insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the County by the Insurer.

The acceptance and/or approval of the Provider's insurance shall not be construed as relieving the Provider from any liability or obligation assumed under this contract or imposed by law.

The Monroe County Board of County Commissioners, its employees and officials will be included as "Additional Insured" on all policies, except for Workers' Compensation.

Any deviations from these General Insurance Requirements must be requested in writing from the County. Such requests shall be prepared from the County's form entitled "Request for Waiver of Insurance Requirements" and approved by Monroe County Risk Management.

A. Prior to the commencement of work governed by this contract the Provider shall obtain Workers' Compensation Insurance with limits sufficient to respond to Florida Statute 440.

In addition, the Provider shall obtain Employers' Liability Insurance with limits of not less than:

- \$100,000 Bodily Injury by Accident
- \$500,000 Bodily Injury by Disease
- \$100,000 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of the contract.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-V1, as assigned by the A.M. Best Company.

B. Prior to the commencement of work governed by this contract, the Provider shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations and Contents
- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Expanded Definition of Property Damage

The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

- \$ 500,000 per person
- \$1,000,000 per Occurrence
- \$ 100,000 Property Damage

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the County.

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

10. **INDEMNIFICATION AND HOLD HARMLESS:** The Provider shall indemnify and hold harmless the County, their departments, agencies, officials, employees, agents, servants and contractors, against any claims, liabilities and expenses (including reasonable attorney's fees) arising as a result of any direct and/or indirect action of Provider, its employees, agents, servants and/or contractors in the performance of the terms of this contract or otherwise related to activity conducted in the furtherance of this contract except to the extent that, in the case of any act of negligence, Provider reasonably relied upon material supplied by the County or any employee of County. Provider shall immediately give notice to County of any suit, claim or action made against Provider that is related to any activity under this contract and will cooperate with the County in the investigation arising as a result of any suit, claim or action related to this contract.

11. **LAWS AND REGULATIONS:** It shall be understood and agreed that any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

12. **TAXES:** The County is exempt from Federal, Excise and State of Florida Sales Tax.

13. **FINANCE CHARGES:** The County will not be responsible for any finance charges.

14. **SEVERABILITY:** If any term, covenant, condition or provision of this contract shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this contract, or the application of such provision other than those as to which it is invalid or unenforceable, shall not be affected thereby; and each remaining term, covenant, condition and provision of this contract shall be valid and enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and Provider agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

15. **FORCE MAJEURE:** The Provider shall not be liable for delay in performance or failure to perform in whole or in part, the services due to the occurrence of any contingency beyond its control or the control of any of its sub-Providers or suppliers, including labor dispute, strike, labor shortage, war or act of war whether an actual declaration thereof if made or not, insurrection, sabotage, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, accident, fire, explosion, storm, flood, drought, or other act of God, act of any governmental authority, jurisdictional action, or insufficient supply of fuel, electricity, or materials or supplies, or technical failure where the Provider has exercised reasonable care in the prevention thereof, and any such delay or failure shall not constitute a breach of the contract. The Provider shall notify the TDC of any delay or failure to perform within five (5) days of such action. Upon demand of TDC, the Provider, must furnish evidence of the causes of such delay or failure. The Provider shall not resume its performance hereunder unless provided for in the Scope of Services.

16. **ASSIGNMENT:** Provider shall not assign, transfer, sublease, pledge, hypothecate, surrender, or otherwise encumber or dispose of this contract or any estate created by this contract or any interest in any portion of the same, or permit any other person or persons, company or corporation to perform services under this contract without first obtaining the written consent of the County. In the event of such consent, this contract shall be binding upon the Provider's successors and assigns.

17. **DISCLOSURE:** The Provider shall be required to list any or all potential conflicts of interest, as defined by Florida Statute 112 and Monroe County Ethics Ordinances. The Provider shall disclose to the County all actual or proposed conflicts of interest, financial or otherwise, direct or indirect, involving any client's interest which may conflict with the interest of the County.

18. **ADDITIONAL CONDITIONS:** Provider agrees to accept additional conditions governing the use of funds or performance of work as may be required by federal, state or local statute, ordinance or regulation or by other policy adopted by County. Such additional conditions shall not become effective until Provider has been notified in writing and no such additional conditions shall be imposed retroactively.

19. **INDEPENDENT PROFESSIONAL JUDGEMENT:** Provider shall at all times exercise independent professional judgment and shall assume full responsibility for the service to be provided and work to be completed.

20. **CARE OF PROPERTY:** The Provider shall be responsible to the County for the safekeeping and proper use of the property entrusted to Provider's care, to include any and all insurance for the value of the equipment and any maintenance or service contracts relating to such equipment for its service life.

21. **ETHICS CLAUSE:** The Firm warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of the Monroe County government or the TDC has any interest, financially or otherwise, in the Firm or its subcontractors. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

22. **COVENANT OF NO INTEREST.** County and Provider covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

23. **NO SOLICITATION/PAYMENT.** The County and Provider warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other

consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the Provider agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

24. NOTICE: Any notice required or permitted under this contract shall be in writing and hand-delivered or mailed, postage prepaid by certified mail, return receipt requested, to the other party as follows:

For Provider: Ms. Linda O'Brian
The Market Share Company, Inc.
605 United Street
Suite 1
Key West, FL 33040

For Monroe County TDC: Ms. Lynda Stuart
1201 White Street
Suite 102
Key West, FL 33040

County shall give notice to Provider of any meetings on which is an agenda item pertaining to Providers contract. Said notice shall be given so that Provider has ample time to make travel arrangements for an Executive Board member to attend the meeting.

25. TERMINATION: Either party shall have the right to cancel this contract at its sole discretion with or without cause upon ninety (90) days prior written notice to the other party. Provider shall deliver to the County all papers, equipment and other material related to the work performed under this contract upon termination thereof.

26. PUBLIC ENTITY CRIME STATEMENT: A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

27. APPROVALS AND CHANGES OF SPECIFICATIONS OF SERVICES: The TDC shall have the sole and exclusive right to approve, modify, reject, or cancel any and all plans, proposals, submissions and other work in process, in which event the TDC's directions shall be immediately implemented. However, nothing in this contract shall be construed as requiring the Provider to violate any contractual commitments to vendors contracted on TDC's behalf. All contractual commitments to contracted vendors require the TDC's prior written approval. The County shall only be liable for charges approved in writing prior to the Provider's entering into such contractual commitment.

The performance of all services between Provider as described and otherwise provided under this contract will be in full cooperation with and under the direct supervision of the TDC. Whenever approval is required from the TDC, said approval shall be in writing from the TDC Administrative Director or a designee, according to TDC policy.

28. EXCLUSIVE REPRESENTATION: The Provider agrees that it will not represent any private resort or attraction within Monroe County or any other municipal or County destination in Florida, without prior approval in writing from the TDC. Provider shall act at all times herein as independent contractor, and nothing contained herein shall be construed to create the relation of principal and agent or employer and employee, between TDC/County and Provider.

29. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and Provider agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

The County and Provider agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

30. ATTORNEY'S FEES AND COSTS: The County and Provider agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

31. ADJUDICATION OF DISPUTES OR DISAGREEMENTS. County and Provider agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

32. COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and Provider agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and Provider specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

33. BINDING EFFECT. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and Provider and their respective legal representatives, successors, and assigns.

34. AUTHORITY. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

35. NONDISCRIMINATION. County and Provider agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Provider agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

36. NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the Provider agree that neither the County nor the Provider or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

37. ATTESTATIONS. Provider agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

38. OWNERSHIP: All work performed under the contract shall be the property of the TDC and County, for whatever use and/or disposition the TDC and County may deem

appropriate. Such property shall include: a) all plans, documents and recommendations; b) All manuscripts, copy, graphics, and videotapes. The TDC and County shall have the full right to reproduce and/or use any products derived from the Provider's work under the contract without payment of any royalties, or fees.

39. **FULL CONTRACT:** This writing embodies the entire contract and understanding between the parties hereto, and there are not other contracts/agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. In order to be effective, any amendment and/or change to this contract shall be in writing recommended by the TDC and approved by the County and signed by both parties.

40. **SECTION HEADINGS:** Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

41. **CONSTRUCTION:** This contract has been carefully reviewed by legal counsel for both parties. Therefore, this contract shall not be strictly construed against either party on the basis of authorship.

IN WITNESS WHEREOF, the parties have executed this contract the day and year first above written.

(SEAL)
Attest:
DANNY L. KOLHAGE, Clerk

Monroe County Board of County
Commissioners

Clerk

Mayor/Chairman

(SEAL)
Attest:

The Market Share Company, Inc.

By : _____
President

MONROE CCUNTY ATTORNEY
APPROVED AS TO FORM


SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY

Date

5/11/24